the terms agreed between the parties. By the tenant's election and also by the tenant's admission that the premises had suffered a change of identity, the court was discharged from the duty of investigating the matters in controversy, and the tenant took a benefit under the consent judgment which enabled her to remain in possession until the 29th February, 1964. Having regard to these circumstances and the long delay on the part of the tenant in bringing the present action, I take the view that the tenant cannot now resile from the election made by her and resuscitate a plea which was abandoned by her and re-open the litigation which was intended by both parties to be brought to an end by the consent judgment.

For the above reasons I come to the conclusion that the defendants succeed on the preliminary point raised by them, and I accordingly dismiss the plaintiff's claim with costs.

Claim dismissed.

Solicitors: *L. A. J. Smith; Allen & Gledhill.*

SAY LIP HIN v. SAY LIP HIN

[O.C.J. (Ong J.) January 4, 1965]

[K.L. — Divorce Petition No. 15 of 1964]

Husband and wife — Divorce — Cruelty — Neglect — Fallen out of love — Whether sufficient ground — Divorce Ordinance, 1952, s. 7(2)(d).

The fact that a man has neglected his wife and has fallen out of love for her is not a sufficient ground for her to obtain a decree of dissolution of marriage.

DIVORCE PETITION.

K. L. Devaser for the petitioner.

Respondent absent.

Ong J.: This was an undefended petition by a wife for dissolution of her marriage to the respondent. The petitioner alone gave evidence in support of the petition, which I had no option but to dismiss.

The parties were married in the Registry of Marriages, Malacca, on November 11, 1961. The petition was filed on November 13, 1964. However, in December 1962, the respondent left the matrimonial home in Malacca to take up an appointment in Penang, where the petitioner visited and lived with him in January 1963. If this was tantamount to desertion without cause — which I very much doubt — such desertion nevertheless has not exceeded three years, the minimum period required under section 7(2)(d) of the Divorce Ordinance, 1952.

In paragraph 15 of her petition there was merely a hint of adultery supported by not an iota of evidence.

The petitioner accordingly was left with only one ground for divorce, namely, cruelty. With all the sympathy in the world for her, I am nevertheless compelled to the conclusion that cruelty in the sense in which it is understood in these cases has been far from made out. It is true that the respondent has neglected her, but I am afraid that the fact that a man has fallen out of love for his wife is not a sufficient ground for her to obtain a decree of dissolution of marriage.

The evidence of the petitioner speaks for itself and clearly supports my conclusion. I have nothing more to add.

Petition dismissed.

CHAN FOOK WAH v. BOARD OF ARCHITECTS

[A.C.J. (Winslow J.) January 6, 1965]

[Singapore — Originating Motion No. 22 of 1964]

Architect — Disciplinary proceedings — Infamous conduct in a professional respect — Charge under invalid by-law — Architects Ordinance (Cap. 189), Architects By-laws, 1941, by-law 13.

Administrative Law — Validity of by-law — By-law ultra vires the Ordinance.

This was an appeal against the order of the board of architects cancelling the certificate of registration of the appellant as an architect and removing his name from the register of architects. The offence alleged against the appellant was one under by-law 13(26) of the Architects By-laws, 1941, for signing or putting his signature to plans not prepared by him or by his staff under his supervision for the purpose of obtaining the sanction of the local authorities.

Held: by-law 13 was *ultra vires* the provisions of the Ordinance and was null, void and invalid. The institution of proceedings therefore against the appellant was completely unjustified and the appeal must be allowed.

Case referred to:—

(1) *Re Lee Kian Soo, an Architect* [1953] M.L.J. 195.

ORIGINATING MOTION.

Lim Chor Pee and *Khoo Hin Hiong* for the appellant.

T. H. A. Potts for the respondent.

Cur. Adv. Vult.

Winslow J.: The appellant who is about 67 years of age appeals against the order of the Board of Architects dated 14th October, 1964, cancelling his certificate of registration as an architect and the removal of his name from the register of architects. He was first informed in August, 1963 that he was required to attend a meeting of the board to be held on 3rd September, 1963 "in connection with a court case" relating to one C. H. Wee who had previously been convicted of cheating. Various meetings by the board were held thereafter until October, 1964

when the board purported to conclude its enquiry into an allegation of an offence committed by the appellant under by-law 13(26) of the Architects By-laws, 1941. This by-law reads as follows:—

"13. The following acts and practices on the part of an architect registered under this Ordinance are hereby prohibited and shall be deemed to be conduct which is infamous in a professional respect under section 8:

(26) To sign or put his signature to plans not prepared by him or by his staff under his supervision for the purpose of obtaining the sanction of the local Authorities.

Considerable argument was directed towards the fact that no specific charge had been framed against the appellant. Complaint was also made that the board was improperly constituted. There were a number of other grounds of appeal relating to the proceedings before the board and the sufficiency of the evidence adduced with which I need not concern myself.

I do not think that the appellant could have been prejudiced by the failure to frame a specific charge, although it would have been desirable for the board to have done so.

As Brown J. said in the case of *Lee Kian Soo, an Architect* [1] at page 199:

"There is no suggestion that at the meeting on the 5th August the appellant was not given a full opportunity to be heard. What is said is that there was no 'charge' and that therefore appellant did not know the precise allegation that he was required to answer. The board will not take it amiss if I say that it is advisable in every disciplinary case, no matter what may have been said in previous correspondence, that the person concerned should be sent in *'ad hoc'* letter requesting him to appear at the place, date and time fixed for the hearing, and setting out in clear and precise terms the 'charge' or allegation which he has to meet, with a reference to the number of the rule, regulation bye-law or other written provision (if any) which he is alleged to have contravened. I believe this to be the practice in the case of every statutory board which is invested with disciplinary powers, and it seems to be borne out in all the cases which have been cited. It was not done in this case."

In this particular case I am satisfied that the appellant knew exactly why an enquiry was being held into his conduct although he was not particularly fluent in the English language.

I am astounded that neither the board nor its legal adviser nor the various members of the Bar who have represented the appellant in the past ever seem to have heard of this case.

The board should certainly have known of this decision which held that by-law 13 was not only *ultra vires* the provisions of the Ordinance, but also null, void and invalid.

In the circumstances the institution of the present proceedings against the appellant was completely unjustified, and he has been placed on the carpet since 1963 in respect of a breach of a by-law which has been held to be invalid since 1953.

Brown J., giving his reasons, with which I entirely agree, and which I adopt, said at page 200 —

"I have already said that in laying this duty upon the board the Legislature has in my view taken the course which is consistent with common sense. If an architect's professional misconduct is to be branded as 'infamous' the proper people to apply the brand are members of his profession sitting in judgment on him, who after hearing his defence and weighing all the facts will form their opinion in the light of their professional experience and by the application of their professional standards. By bye-law 13 the board in its legislating capacity has purported to remove from the purview of its members sitting in their quasi-judicial or disciplinary capacity any consideration of whether the misconduct amounts to what is 'infamous' in the case of twenty-seven forms of misconduct. By this bye-law these twenty-seven forms of misconduct are 'deemed to be conduct which is infamous in a professional respect under section 8'. No matter what the excuse or the mitigating circumstances, the board in its disciplinary capacity is precluded from forming any opinion upon whether the man's conduct is 'infamous' or not. Being deprived of this right (and duty) which the Legislature conferred upon it, it is left only with the right (and the duty) to decide whether, having regard to all the facts, the person whose conduct they are compelled by the bye-law to deem 'infamous' should be struck off. But whatever their decision, and however strong their sympathy, the brand of 'infamous' upon their professional colleague must remain.

In my opinion bye-law 13 is invalid by reason of the words 'and shall be deemed to be conduct which is infamous in a professional respect under section 8'. Those words purport to take away from the board a duty with which the Legislature has entrusted them in a disciplinary case; and they purport to deprive an architect of the right not to have his conduct stigmatized as 'infamous' except by the judgment of his professional colleagues after a full consideration of the facts."

I find it difficult to deprecate in stronger terms my views on the failure of all counsel concerned to discover and to draw the board's attention to this case. I am also surprised that the registrar of the board did not have a note of this case on his records. I am also at a loss to understand why the by-laws were not amended. In the legal profession, we owe a debt to Dr. Mallal who, through his assiduity, has produced monumental works like his *Digest* and its *Supplement* to make our own work easier.

If counsel had consulted these works earlier the present proceedings would never have been instituted.

The appeal is therefore allowed, though not on any of the grounds submitted on his behalf. I was at one stage disposed to order that each party should bear its own costs. Having regard however, to the fact that, sitting on appeal as I now do, I apparently cannot award him any compensation for the irreparable harm which has been done to him in the twilight of his life, I think that the least I can do is to allow the appeal with costs in his favour.

Before I conclude I shall like to make a few

observations on proceedings before the board. In my opinion, evidence should first be led in support of a charge before an architect is called upon for his explanation. Much as I regret having to say so, this was not done in the present case and there is some ground for the complaint made on behalf of the appellant that methods, smacking of the inquisitorial procedures adopted in bygone days and still adopted today in less fortunate countries, were followed. To deprive a man of his right to profess his chosen career is a serious matter. Though there may have been some ground for righteous indignation on the part of his official colleagues who were there to make due inquiry into his conduct they could, in my view, have first called evidence proving the charge against him. I have to say with regret that they appear to have proceeded on the basis that he was guilty and had to prove his innocence.

The only evidence against him was that of a letter written to him by a convicted cheat and an agreement in writing in English in which he is alleged to have agreed to sign plans prepared by that cheat. There was no direct evidence of his ever having so signed a single plan. He was asked to explain his conduct in so signing plans when there was no evidence of this apart from the agreement which merely proved an intent to do so. If this was infamous conduct in a professional respect then it was for the board to say so in unmistakable terms. This they have not done. They have merely charged him with breach of an invalid by-law and with signing plans prepared by someone else without proof thereof. He may have been guilty of conspiring to sign such plans with the convicted cheat. If this was infamous conduct he should have been charged accordingly. He was not.

The appeal therefore succeeds with costs.

I might add that Brown J. also decided in the case cited that the correct procedure for an appeal to the High Court is by way of originating motion as was done in this case.

Appeal allowed.

Solicitors: *Chor Pee & Hin Hiong; Rodyk & Davidson.*

LIAW v. BLIKAS

[O.C.J. (Lee Hun Hoe J.C.) January 9, 1965]

[Sibu — Civil Suit No. 23 of 1964]

Probate and Administration — Grant of probate and letters of administration by probate officer — Application for revocation of grant — Procedure — Power of probate officer to revoke grant — Administration of Estates Ordinance (Sarawak Cap. 80 of 1948 Revised Edn.), ss 9 and 32.

Native Law and Custom — Dayak customary law — Lanting — Application of Laws Ordinance.

This was an application for the revocation of letters of administration granted to the defendant. The probate officer had granted letters of administration to the defendant as it appeared that defendant looked after the deceased's bilek and was solely responsible for the funeral feasts.

Held: (1) there would appear to be no provision for challenging the decision of the probate officer by way of appeal to the courts and the plaintiff should have applied to the probate officer to revoke the grant;

(2) in any case the plaintiff had failed to establish that the probate officer had granted the letters of administration to the wrong person in this case, as on the evidence the defendant had shown that she was entitled to the property according to Dayak customary law.

Cases referred to:—

(1) *Foo Sam Tek* v. *Probate Officer, Simanggang* [1960] S.C.R. 17, 18.

(2) *Re Chew Siew Khim* [1964] M.L.J. 412.

(3) *Li Khoi Chin* v. *Su Ah Poh* [1950] S.C.R. 17.

(4) *Chan Bee Neo & Ors.* v. *Ee Siok Choo* [1947] S.C.R. 1.

(5) *Sat anak Akum & Anor.* v. *Randong anak Charareng* [1958] S.C.R. 104.

CIVIL SUIT.

George Seah for the plaintiff.

Defendant in person.

Cur. Adv. Vult.

Lee Hun Hoe J.C.: Originally plaintiff prayed for (a) the revocation of the letters of administration granted to defendant, (b) a declaration that plaintiff should be entitled to that parcel of land described as J.O.T. No. 1625 of about 1.25 acres, and (c) an order that plaintiff should be granted letters of administration. At the hearing Mr. Seah for plaintiff informed the court that he was abandoning (b) and (c). So the only matter for the court to decide is (a).

Deceased, Liat anak Belayong died some years ago at Rumah Jana, Sarikei. He had three sons and three daughters. Ganing is the eldest son. Plaintiff is the 2nd son and Gayai the youngest son. The three daughters are called Jaliah, Isi and Amih. As soon as his children were married they lived separately from deceased. Jaliah is now dead. She had a son, Adau who married defendant. Adau had passed away. Since her marriage defendant had been in deceased's "bilek" (room i.e. the family household unit) and still remains there. On 22nd November, 1963 at the request of Ganing and with the agreement of Tuai Rumah Jana the probate officer, Sarikei, granted letters of administration to defendant because it was represented to the probate officer that defendant looked after deceased's "bilek" and was solely responsible for the "perantu" (the last feast for the dead).

In Sarawak it seems the grant of probate and letters of administration is in the hands of the administration and there does not appear to be any provision for challenging the decision